

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RICHARD HOEFT,

Petitioner,

ORDER

09-cv-120-bbc

v.

BRUCE JOANIS, NATHANIEL DELEGAN,
TOM RENZ and ASHLAND COUNTY,

Respondents.

Plaintiff Richard Hoeft has filed a notice of appeal from the judgment entered in this case on April 30, 2009 dismissing his due process, conspiracy and failure to train claims because they are barred by Heck v. Humphrey, 512 U.S. 477 (1994). Because he has not paid the \$455 fee for filing a notice of appeal, I construe the notice as including a request for leave to proceed in forma pauperis on appeal.

Plaintiff's request for leave to proceed in forma pauperis on appeal will be denied, because I am certifying that his appeal is not taken in good faith. In Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals instructed district courts to find bad faith where a plaintiff is appealing the same claims the court found to be without legal merit

in denying plaintiff leave to proceed on his complaint. See Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). Plaintiff is trying to appeal the same claims I have found to lack legal merit. Because there is no legally meritorious basis for plaintiff's appeal, I must certify that the appeal is not taken in good faith.

Because I am certifying plaintiff's appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the \$455 filing fee unless the court of appeals gives him permission to do so. Pursuant to Fed. R. App. P. 24, plaintiff has 30 days from the date of this order in which to file a motion asking the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order. Plaintiff should be aware that these documents should be filed in addition to the notice of appeal he has previously filed. If plaintiff does not file a motion requesting review of this order, the court of appeals may not address this court's denial of leave to proceed in forma pauperis on appeal, but rather require plaintiff to pay the entire \$455 filing fee before it considers his appeal. If plaintiff fails to pay the fee within the deadline set, the court of appeals ordinarily will dismiss the appeal.

ORDER

IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that his appeal is not taken in good faith.

Entered this 2nd day of June, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge